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her death the estate should be equally divided among the children, each one to account for any advances. Held, that the wife acquired absolutely during her widowhood a right to the whole of the rents and income of the estate.

2. Same—Disposition by Devisee—Authority.—The testator nominated the wife executrix, but she declined the office. Held, that the wife thereby did not surrender any of the powers given to her under the will, except those relating to the office of executrix.

3. Same—Testamentary Powers—Exercise—Control by Equity.—A testator gave all his property to his wife, to be used by her for the mutual benefit of herself and children, and provided that he desired her to make advances to the children as circumstances might require, so that they should enjoy the estate in equal degree. Held, that the mere fact that the wife saw fit to make an advancement to one child did not create a right in all the children to demand an equal advancement, which a court of equity could enforce, and in the absence of fraud on the part of the wife, or proof that she was acting in bad faith, equity would not interfere in the exercise of her discretion as to advancements.

STROTHER'S ADM'X *v.* STROTHER et al.

Jan. 17, 1907.

[56 S. E. 170.]

1. Equity—Bill—Multifariousness—Personal Claim—Claim as Administrator.—A bill brought to recover a claim in complainant's own right against a partnership of which complainant was a member and a claim as administrator against the same partnership is not multifarious.

2. Same.—A bill is not multifarious because one of two demands is a legal one, unless the causes of actions are wholly distinct and each one is sufficient as stated in the bill.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 19, Equity, § 346.]

3. Same—Remedy at Law—Action by Partner against Partnership.—A debt due complainant as administrator by a firm of which he is a member is one which cannot be recovered at law; for one cannot be both plaintiff and defendant in an action at law, nor can an action be brought against certain members of a partnership on a contract entered into by the firm.

4. Appeal—Grounds of Review—Presentation in Lower Court—Ground for Demurrer.—No ground for demurrer, not assigned in the trial court, can be considered on appeal, except where the trial court has no jurisdiction of the case.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 2, Appeal and Error, § 1223.]